

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

MONSANTO EXPORT COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0622

Decision No. CU 810

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by MONSANTO EXPORT COMPANY in the amount of \$147,035.22, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

Officers of claimant, MONSANTO EXPORT COMPANY, and of Monsanto Company have certified that claimant was organized in the State of Delaware on January 8, 1944, and that at all times between such incorporation and presentation of this claim on December 30, 1965, all of its outstanding capital stock has been held by Monsanto Company; that Monsanto Company was organized in the State of Delaware on April 19, 1933, and that at all times between such incorporation and presentation of this claim, more than 50 per centum of the outstanding stock of Monsanto Company has been held by United States nationals. Therefore, the Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of Monsanto Company certifies that 99.914% of its common stock is held by nationals of the United States.

The record includes copies of correspondence from banks, agents of the claimant, and consignee business enterprises in Cuba, ledger sheets, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorizations were never granted by the respective Cuban governmental agencies. Other drafts for shipments made by claimant were not paid to the collecting bank by the consignees. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates when the unpaid drafts were due and payable, or the dates on which payments were made or acknowledged by the respective banks (the listed amounts are net after adjustment or credit):

<u>Invoice Date and Number (ME-)</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment or Acknowledgment</u>
<u>Ribbon Fabric Co. of Cuba, S.A.</u>		
November 9, 1959 82992	\$ 412.50 (February 9, 1960)	---
November 18, 1959 83032	\$ 1,650.00 (February 18, 1960)	---
<u>Francisco Taquechel, Drogueria Taquechel</u>		
October 20, 1959 32190	---	\$ 177.50 (July 1, 1960)
<u>Ramon Alonso</u>		
November 15, 1959 82997	\$ 711.04 (February 15, 1960)	
	\$ 711.03 (March 15, 1960)	
<u>Agrotecnica Industrial y Comercial, S.A.</u>		
September 15, 1959 32052	---	\$3,304.49 (November 29, 1959)
<u>Productora de Superfosfatos, S.A.</u>		
June 15, 1960 30485	---	\$13,838.40 (August 1, 1960)
<u>Octavio de Prado</u>		
November 25, 1959 32313	---	\$ 986.00 (January 13, 1960)
<u>Pinturas Kliper, S.A.</u>		
February 19, 1960 30178	---	\$ 358.10 (April 21, 1960)
<u>Importaciones Gispert, S.A.</u>		
September 25, 1959 32110	---	\$ 830.00 (May 25, 1960)
<u>Cuban Bagasse Products</u>		
August 2, 1958 30732	\$ 1,842.00 (September 2, 1958)	---

<u>Invoice Date and Number (ME-)</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment of Acknowledgment</u>
<u>Fabrica Nacional de Pinturas, S.A.</u>		
December 12, 1959 83111	---	\$ 299.24 (May 12, 1960)

Armando Aguilar Bencomo

September 29, 1959 31962	\$ 90.81 (November 29, 1959)	---
October 16, 1959 31963	---	\$ 75.07 (June 30, 1960)
October 19, 1959 31964	---	\$ 3,370.24 (July 14, 1960)
November 10, 1959 31965	---	\$ 3,376.09 (March 10, 1960)
May 5, 1960 39366	\$ 164.13 (June 5, 1960)	---
June 20, 1960 5549-D	\$ 210.93 (July 20, 1960)	---

The loss of \$7,287.27 is reduced by the application of certain additional credits of \$12.87 (ME-31961) and \$610.44 (ME-5086-C), in the total amount of \$623.31, which credits are being deducted from Invoice Nos. ME-31962, ME-31963, and ME-31964 for determining net loss of \$6,663.96.

Segismundo Pons

July 29, 1958 80930	---	\$ 7,999.98 (March 21, 1960)
October 15, 1959 82888	---	\$ 8,750.00 (May 26, 1960)
November 4, 1959 82949	\$ 6,150.00 (February 25, 1960)	---
November 24, 1959 83061	\$ 1,537.50 (February 27, 1960)	---
November 30, 1959 83135	\$ 4,991.75 (February 15, 1960)	---

The loss of \$29,429.23 is reduced by the application of certain additional credits of \$1.14 (ME-9101-C), \$720.00 (ME-9280-C) and \$2,530.66 (ME-9308-C), in the total amount of \$3,251.80, which credits are being deducted from Invoice ME-80930 for determining net loss of \$26,177.43.

<u>Invoice Date and Number (ME-)</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment or Acknowledgment</u>
<u>Productos Agro Quim, S.A.</u>		
July 30, 1959 31860	\$16,880.27 (September 30, 1959)	---
September 30, 1959 32122	\$ 6,177.36 (November 30, 1959)	---
November 30, 1959 32346	\$ 4,629.87 (January 30, 1960)	---
November 30, 1959 32347	\$ 1,661.74 (January 30, 1960)	---
November 30, 1959 32363	\$ 1,797.16 (January 30, 1960)	---
December 28, 1959 32467	\$ 1,555.47 (March 28, 1960)	---
December 28, 1959 32468	\$ 568.21 (March 28, 1960)	---
December 28, 1959 32469	\$ 863.50 (February 28, 1960)	---
December 28, 1959 32470	\$ 246.78 (February 28, 1960)	---
February 29, 1960 30215	\$ 1,278.70 (May 29, 1960)	---
February 29, 1960 30216	\$ 406.85 (May 29, 1960)	---
June 13, 1960 30777	\$ 730.80 (September 13, 1960)	---
June 13, 1960 30778	\$ 987.09 (August 13, 1960)	---
July 28, 1960 30952	\$ 6,304.80 (October 28, 1960)	---
July 28, 1960 30953	\$ 1,723.60 (September 28, 1960)	---
August 12, 1960 31027	\$ 4,214.01 (October 12, 1960)	---

<u>Invoice Date and Number (ME-)</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment or Acknowledgment</u>
<u>Fernandez, Segrera y Cia., S.L.</u>		
September 2, 1958 80907	\$ 6,000.00 (March 2, 1959)	\$ 6,000.00 (July 6, 1960)
September 22, 1958 80917	\$12,000.00 (March 22, 1959)	---
April 7, 1959 81991	\$ 5,725.00 (October 7, 1959)	---
July 8, 1959 82370	\$ 5,725.00 (January 8, 1960)	---
September 16, 1959 82649	\$ 5,125.00 (December 16, 1959)	---

The loss of \$40,575.00 is reduced by the application of certain additional credits of \$2,315.05 (ME-9307-C), which credits are being deducted from Invoice No. ME-80907 (March 2, 1959) for determining net loss of \$38,259.95

The Commission finds the claimant suffered a net loss of \$146,247.85.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim, the Commission finds that the subject accounts receivable as heretofore described, in the total amount of \$146,247.85, were lost as a result of intervention by the Government of

Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates (where no information is contained in the record as to maturity dates, maturity dates are determined to be 30 days after the invoice date on sight drafts) with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold to Fernandez, Segrera y Cia., S.L. (Invoice Nos. ME-80907 and ME-80917), and Cuban Bagasse Products (Invoice No. ME-30732), prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the losses arising from shipments of goods to Cuban consignees shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$17,526.95
September 30, 1959	16,880.27
October 7, 1959	5,725.00
November 30, 1959	9,481.85
December 16, 1959	5,125.00
January 8, 1960	5,725.00
January 14, 1960	986.00
January 30, 1960	8,088.77
February 9, 1960	412.50
February 15, 1960	5,702.79

<u>ON</u>	<u>AS TO</u>
February 18, 1960	\$ 1,650.00
February 25, 1960	6,150.00
February 27, 1960	1,537.50
February 28, 1960	1,110.28
March 11, 1960	3,376.09
March 15, 1960	711.03
March 22, 1960	4,748.18
March 28, 1960	2,123.68
April 22, 1960	358.10
May 13, 1960	299.24
May 26, 1960	830.00
May 27, 1960	8,750.00
May 29, 1960	1,685.55
June 5, 1960	164.13
July 2, 1960	177.50
July 7, 1960	6,000.00
July 15, 1960	2,912.81
July 20, 1960	210.93
August 2, 1960	13,838.40
August 13, 1960	987.09
September 13, 1960	730.80
September 28, 1960	1,723.60
October 12, 1960	4,214.01
October 28, 1960	6,304.80

A portion of the claim is based upon the asserted loss of \$705.00, sustained in connection with the sale of goods to Pan Rubber Manufacturers Corp., of Havana, Cuba. With the exception of a Statement, Ledger No. 914769, dated July 31, 1967, reflecting Invoice No. ME-00005, dated March 10, 1960, for \$705.00, and statements by the Credit Manager, International Division of claimant corporation, the record contains no evidence, contemporaneous with the asserted time of loss, substantiating this portion of the claim.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission has considered the evidence pertaining to the claim against Pan Rubber Manufacturers Corp., and finds that it is not of sufficient probative value to establish claimant's loss of payment for merchandise shipped to Pan Rubber Manufacturers Corp. of Havana, Cuba. Thus, the Commission is constrained to deny this portion of the claim based on the shipment of merchandise to Pan Rubber Manufacturers Corp., and it is hereby denied.

CERTIFICATION OF LOSS

The Commission certifies that MONSANTO EXPORT COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Forty-Six Thousand Two Hundred Forty-Seven Dollars and Eighty-Five Cents (\$146,247.85) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

14 DEC 1967

CERTIFICATION

THIS IS A TRUE AND CORRECT COPY OF THE DECISION
OF THE COMMISSION MADE AND ENTERED ON THE 14th DAY
OF DECEMBER 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)